

THOMAS R. SUOZZI
County Executive

LORNA B. GOODMAN
County Attorney



OFFICE OF THE COUNTY ATTORNEY

ANNUAL REPORT 2004



**County Executive
Thomas Suozzi**

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County Executive



LORNA B. GOODMAN
County Attorney

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December 31, 2004

Dear County Executive Suozzi,

It is with great pride that I present to you this first Annual Report describing the activities of the Nassau County Attorney's Office. In it you will read about the accomplishments which, with your support, have been achieved since January 2002.

First, we have completed the process of bringing "in house" the last of the \$10 million of legal work which had been given out to the private bar by the former administration. This is a direct consequence of our hiring, through a rigorous competitive process, a cadre of able lawyers, both experienced and inexperienced, committed to serving the public with excellence. Many of these people have foregone higher salaries and more prestigious positions for the excitement of working in your administration to rebuild the County, and gaining experience which is only available in the public sector.

Second, with your assistance we have established a formal career and salary plan. This has enabled the office to become and remain competitive with other public sector law offices, and to offer our attorneys recognition and recompense for their hard work and dedication.

Third on my list of top accomplishments is the enhanced reputation of the County Attorney's Office. The first rate work coming out of this office is frequently noted and complimented by members of the judiciary, practitioners at the private bar, legislators, and even legal academics.

Two key technological advances have enabled the County Attorney's Office to perform as it does today. When the administration took over in January 2002, the office did not have a functioning law library! Within two months, every attorney had a computer with a legal research capacity as well as access to the Internet. The second enhancement - the migration of

our three-by-five index cards containing case information to an electronic data retrieval system - has taken somewhat longer. By the end of this year, we will be able to access extensive information on our ProLaw system about most of our 2000 plus cases in a matter of minutes.

Despite these accomplishments, we still have a long way to go. While significant numbers of minority attorneys have been hired, we must increase our outreach in this area as top students often get hired before we even visit the school; our physical quarters are far less than ideal. The system of settling cases in Nassau County by submission to a politically polarized Legislature is time consuming and frustrating for the courts and litigants alike. New procedures for legislative oversight of settlements and judgments should be created to accommodate the realities of the litigation process.

You will read in the following pages about the work of the various bureaus and their significant victories. In addition to our attorneys, I would also like to recognize the tremendous contribution of our wonderful non-legal support staff who work so hard every day to help make this the best law department in the best County in the Country.

Sincerely,

Lorna B. Goodman

Lorna B. Goodman
County Attorney

EXECUTIVE STAFF



From left: Peter Reinharz, Managing Attorney; Meredith A. Feinman, Executive Chief Deputy County Attorney; LORNA B. GOODMAN, COUNTY ATTORNEY; Elizabeth D. Botwin, Chief Deputy County Attorney; David Goldin, Chief Litigating Attorney

APPEALS BUREAU



David Goldin, Chief (Back row, second from left)

Formally, the role of the Appeals Bureau is to represent the County, its agencies, officers and employees in connection with cases that have been or may be appealed. That role extends from consultation with trial attorneys to prepare issues for appeal through the filing of notices of appeal; applications for interim relief; the drafting and submission of briefs; conducting oral arguments; and continuing consultation with other Deputy County Attorneys and County officials concerning application of appellate decisions to the functioning of County government. Informally, Appeals Bureau lawyers – because of their expertise in presenting complex legal arguments and their broad knowledge of many areas of law – are often called upon to assist other litigation bureaus in preparing motion papers or oral arguments.

While most of the Bureau's appeals are in the Appellate Division, Second Department, the New York Court of Appeals, and the United States Court of Appeals for the Second Circuit, the Bureau has also handled matters before other courts and administrative agencies.

Since 2002 the largely revamped Appeals Bureau has taken responsibility for virtually every matter in which the County of Nassau or one of its agencies is an appellant or respondent. In many instances, appeals that had been assigned to outside counsel before 2002 were brought back "in house," with concomitant savings to the County. In 2004, the six Deputy County Attorneys and one

paralegal of the Appeals Bureau worked on 76 different matters, including many complex non-appellate legal projects, filed 61 briefs and argued orally in 15 cases

Recent Accomplishments

- ***Coliseum Tower Associates v. County:*** This case concerned a dispute arising out of one of the infamous Mitchell Field leases over responsibility for payment of taxes on the site of EAB Plaza. After a trial, in which the County was represented by outside counsel, the Supreme Court ruled that the County was liable for a refund of \$32 million and had continuing obligations that would have amounted to over \$100 million. The Appeals Bureau then took the case “in house,” and won a reversal in the Appellate Division, Second Department and a denial for review by the Court of Appeals. The total saving to the County as a result of this victory exceeds \$100 million.
- ***Shain v. Ellison:*** After plaintiff had prevailed on a civil rights damages claim arising out of his arrest for threatening violence during a domestic dispute and subsequent strip search at the County Correctional Center, the District Court granted a permanent injunction against the strip-searching of misdemeanor admittees to the Correctional Center. At that stage, the County Attorney’s office brought the case “in house,” and the Appeals Bureau successfully handled the appeal. The United State Court of Appeals for the Second Circuit held that plaintiff lacked standing and vacated the injunction. The County remained liable for attorney’s fees.
- ***County of Nassau v. Canavan:*** In this case challenging processes used by the County in connection with its program to seize cars of drivers arrested for drunk driving, the New York Court of Appeals upheld a decision against the County under the statute in effect at the time of the seizure but also, for the first time, gave broad approval for the type of program enacted by the County and set out procedural guidelines for the program’s continuation.
- ***White v. County:*** A group of female police officers, beneficiaries under a 1982 consent decree between the County and the United States, sought to present claims that they were entitled to additional benefits upon retirement under the terms of the decree. Working with the United States Department of Justice, which had initially brought the case against the County but agreed with the County’s interpretation of the consent decree, an Appeals Bureau attorney handled the case on appeal and continued supervising it on remand before the United States District Court, which ruled that plaintiffs’ claims were barred by laches.

Vehicle Forfeiture Unit

Attorneys from the Appeals Bureau have created and overseen the work of a unit of attorneys and support staff who help enforce the County’s new DWI law by processing the forfeiture aspect of every DWI case, from the point of arrest through final disposition and forfeiture. Since the new law was enacted in March 2004, the Vehicle Forfeiture Unit has served nearly 400 complaints demanding forfeiture. Attorneys from this unit will appear at all court proceedings concerning any forfeiture.

FAMILY COURT BUREAU



Stephanie Hubelbank, Chief (First row, second from left)

The work of the Family Court Bureau, which is performed by 16 attorneys and two support staff, is divided into three major categories: 1) the investigation and prosecution of juvenile delinquency matters; 2) the representation of the Department of Social Services in Child Abuse and Neglect Proceedings; and 3) the representation of the Department of Social Services in child support enforcement proceedings and of out-of-state agencies in UIFSA proceedings. Bureau attorneys also represent the Department of Probation in PINS and juvenile delinquency proceedings in which the Department of Probation is the Petitioner.

In 2002, when the current administration took office, the Family Court Bureau was without technology and faced an enormous backlog of old cases. Since that time, we have transformed the Bureau, through technology and a determination to address deficiencies in the Bureau and problems in the system itself. Perhaps the most important transformation of all has been our recognition that the DCAs in the Family Court Bureau have both the responsibility to create opportunities for change, and the power to implement these changes to better serve the County, the court, and the citizens affected by our work. The prevailing environment in 2002, of malaise and frustration, has been replaced by excitement, purpose and pride. We believe that we are making a difference in the way family law is practiced in Nassau County and we remain committed to taking leadership roles in this area.

Accomplishments since 2002

- ***AFSA Compliance:*** In 2002, neither the County nor the Family Court were in compliance with the Adoption and Safe Families Act (ASFA), the federal statute that seeks to reduce the number of

children in foster care by mandating that all alternative are explored before a child is placed outside his/her home. The County's failure to comply with ASFA's strict documenting requirements made it vulnerable to losing federal funding for foster care costs.

Specifically, the statute requires the court to make findings with respect to: 1) whether it is contrary to the best interests of the child to remain in the home; 2) what reasonable efforts have been made to prevent or eliminate the need to remove the child from home; and 3) if the child has been removed, what reasonable efforts have been made to return the child home. There is also a component of the statute that requires permanency planning hearings with the court making relevant findings.

Since 2002, the Family Court Bureau has been instrumental in taking on the responsibility of drafting the courts' orders to achieve statutory compliance. Through our efforts, we have established a multi-disciplinary team made up of the chief clerk, a court attorney, a representative from DSS, the supervising judge and a management analyst from the State's Permanent Judicial Commission on Justice for Children, who meet regularly to do internal self-audits of the Orders to ensure ASFA compliance in anticipation of a federal audit in 2005.

- ***Resolution of backlog of unfiled juvenile delinquency matters and of old, outstanding warrants on juvenile delinquency cases:*** The deputy bureau chief who oversees the juvenile delinquency practice created a system to document the arrival of newly referred cases, assign them for investigation, and document the decision whether or not to file a petition. This simple system of oversight prevents cases from languishing and eliminates dismissals for failure to timely file. We also created a system to track the cases that we decline to prosecute. In 2002, there was a huge backlog of cases that should have been formally declined, but had just been languishing, and the Department of Probation Juvenile Intake Unit had no record of our office's decision. We are now completely up-to-date on the declinations.

In addition, the enormous backlog of JD warrants that we encountered in 2002 have, for the most part, been calendared and reviewed, and are no longer pending in our office or on the court's dockets. We have instituted our own warrant review process to make diligent efforts to locate the "fugitive," and execute the warrant, which enables us to provide the court with documentation of these efforts, without which, if the respondent returns to court while the case is pending, the juvenile delinquency matter will be dismissed.

- ***Increased staff and training for juvenile delinquency cases:*** While the juvenile delinquency cases are handled in Family Court according to the Family Court Act, they are quasi-criminal in nature, and the proceedings require attorneys with experience in criminal law and criminal procedure. To address these concerns, we dedicated more staff to handle juvenile delinquency cases and arranged for formal training of newly hired attorneys. In addition, we have identified opportunities for experienced attorneys to continue their legal training and enhance their skills in relevant subject areas, many of which are provided by law enforcement agencies and organizations, local, regional and national that provide training to prosecutors. As a result, many more cases are being tried, and many more have positive case outcomes –findings in the presentment agency's favor-especially in cases in which respondents are charged with serious felonies, such as sex offenses, and gang-related offenses.
- ***Model Court:*** The Model Court movement is an attempt to transform the way child abuse and neglect cases are handled in family courts. Our Model Court, or Best Practices project establishes cross-system collaboratives in court, guided by a Model Court judge and court attorney who are assisted by a case coordinator. We have been active members of the protocol development team,

and the stakeholders' team. We have been working closely with team members and with professionals from other jurisdictions in New York with Model Courts.

- *Vertical case handling of child abuse and neglect cases*
- *Active participation in multi-disciplinary team to address the sexual abuse of children in child abuse and neglect cases, as well as juvenile delinquency matters*
- *Representation of Department of Social Services in Family Treatment Court*

GENERAL LITIGATION BUREAU



Esther Miller, Chief (First row, center)

The General Litigation Bureau was created in 2002 to enable the County Attorney's Office to handle, "in-house", the many federal civil rights cases and commercial litigations that historically were sent to outside counsel. The Bureau represents the County, County Executive, all County agencies and employees in a multitude of cases that are heard in both State and Federal courts. The federal cases are based upon claims of false arrest and unlawful prison conditions, employment discrimination, unconstitutional termination of employment, and diversity jurisdiction involving commercial claims. In State court, the Bureau's attorneys are involved in commercial litigation, Article 78 proceedings, Kendra's Law compliance, construction law and election law. Attorneys in the Bureau handle a large variety of high profile cases, many of which are dismissed before trial by aggressive pre-trial motion practice. Since its inception, the Bureau, comprised of 13 lawyers and three support staff, has taken back virtually every federal case that had been with outside counsel, and has handled every new federal case commenced against the County. In 2004, Bureau attorneys had four jury trials in federal court and one bench trial in state court.

Recent Accomplishments

- ***Morgenstern v. County, et al:*** This former employee charged the County with wrongful termination from her position with the Nassau County Planning Commission. The court denied the plaintiff's motion for a preliminary injunction reinstating plaintiff to her job.

- ***Pemberton v. County:*** In a bench decision issued in June, 2004 following a two-day trial, Nassau County Supreme Court Justice La Marca rejected a challenge to the County's \$200 pistol permit license fee. The fees, which cover a five-year license period, were raised to \$200 in 2000. The action was filed by seven Nassau County gun owners who alleged that the fees were exorbitant and resulted in an illegal profit to the County. Justice LaMarca ruled that the cost to the County to issue permits and inspect and regulate renewals exceeded what it earned in fees, despite the increase.
- ***Jackson v. County:*** In this case, which was handled through trial by outside counsel, the County and Dr. Sabir, a former employee of the Medical Center, were sued in federal court by the family of an inmate who died while incarcerated, for medical malpractice (state law claim) and deliberate indifference (federal claim). At the time the lawsuit was commenced, Dr. Sabir was no longer working for the County and he was never personally served. Prior counsel not only agreed to proceed without Dr. Sabir, but it also indicated that the County would pay any judgment against him. Accordingly, the court permitted the state law action for medical malpractice case to proceed to trial against the County without Dr. Sabir, and the jury returned a verdict of \$93,000 against the hospital and the County. At that point, that the General Litigation Bureau took over the case and moved to dismiss the case against Dr. Sabir for lack of personal jurisdiction. The County's motion was granted. That was an important victory, because, by removing the personal actor from the case, the remaining federal civil rights claims against the County are virtually unsustainable.
- ***Nutter v. County et al:*** Plaintiff was arrested by Nassau County police for tampering with his girlfriend's vehicle. He alleged that the officers used excessive force in the arrest and commenced a civil rights action in federal court seeking damages for physical and emotional pain and suffering as well as punitive damages and statutory damages under the Civil Rights Act of 1871. After a one week jury trial in the Eastern District Court in Brooklyn, the jury returned a verdict for the County dismissing the complaint.
- ***Thomas Gillen, Gillen Living Trust & Maureen Gillen v. County of Nassau:*** In this action, the plaintiffs asserted claims of §§1983, 1985 and 1986 violations, in addition to claims of malicious prosecution, fraud, and tortious interference with right to bid. The T Gillen/Trust alleged \$45 million in damages for their nine causes of action plus \$45 million in punitive damages; M Gillen demanded \$35 million in damages for her seven causes of action plus \$35 million in punitive damages plus attorneys' fees. The action arose after the Gillens, long time participants in the County's annual tax lien sale of real property, were barred from participating in the 1999 sale, allegedly in retaliation for Mr. Gillen having brought to light an error in the Treasurer's records recorded in favor of Capital Asset Research Corp (another bidder allegedly favored by the then Deputy County Treasurer). Based on plaintiffs' expert's report, along with the cost of litigation, plaintiffs demanded \$1.5 million to settle the case. Following a settlement conference in May 2004, the litigation was settled for \$400,000 using our expert's valuation of plaintiffs' damages plus plaintiffs' attorneys' litigation costs.

LABOR BUREAU



Carolyn Olson, Chief (Back row, center)

The Labor Bureau, consisting of 11 attorneys and one support staff, was created in the fall of 2002 to handle labor and employment-related litigation in both state and federal courts, and to represent the County before administrative agencies, including the Equal Employment Opportunity Commission (“EEOC”), State Division of Human Rights (“SDHR”), the Public Employee Relations Board (“PERB”), US Department of Labor and New York State Department of Labor. Bureau attorneys appear on behalf of the County at grievance proceedings, and also regularly appear in federal court on contract actions.

Recent Accomplishments

- ***Elimination of backlog of unanswered complaints:*** At the time the Bureau was created, it was presented with a backlog of over 20 unanswered complaints pending in the SDHR. Within six months, Bureau attorneys, with assistance from the County Attorney's Claims and Investigations Bureau, completed its review and investigation of these outstanding matters and brought the County up to date with all outstanding lawsuits and SDHR complaints.
- ***Reduced reliance on outside counsel:*** In the past two years, the Bureau has worked to significantly reduce the County's past reliance on outside counsel to handle labor-related matters. In addition to taking responsibility for numerous cases that had been returned to the County Attorney's Office, the Labor Bureau has assumed complete responsibility for defending all new

labor-related Article 78 and Article 75 proceedings and breach of contract actions against the County in State Supreme Court. Bureau attorneys now defend the majority of unfair labor practice charges filed by collective bargaining units in PERB, including trials, conferences and administrative appeals. In fact, the Labor Bureau affords all of its attorneys the opportunity to handle appeals from any cases handled at the trial court or administrative level, and its attorneys have briefed four such appeals in the Appellate Division and over ten administrative appeals before State agencies in the past year alone.

- The Bureau has taken a lead role in trying employment related jury and non-jury trials in State Supreme Court by former County employees claiming discrimination and bad faith lay offs. Most recently, during the summer of 2004, through the coordinated effort of attorneys from the Labor and five other bureaus, the office successfully tried *Calibritto v. Dillon*, in which six employees claimed that their lay-offs in 1992 were in bad faith, and, in addition, that their positions had not been eliminated by the legislature until 1993, entitling them to back pay and other allegedly lost earnings. The jury found that the County had not acted in bad faith, and the trial court ruled that three of the employees were entitled to no damages at all, and that the other three were only entitled to one year of back pay but no other earnings.
- In *Feldman v. Nassau County*, Labor Bureau DCAs won a motion to dismiss a federal court action in which the plaintiff brought an ADEA challenge to the County Civil Service Commission's rejection of an application to take the civil service test for Nassau County Police officer by a candidate who was over the state statutory maximum age.
- Labor Bureau attorneys handled cases for the Nassau County Atlantic Beach Bridge Authority which resulted in favorable dispositions for the client and generated attorney fees for the County.

LEGAL COUNSEL BUREAU



Ruth Markovitz, Chief (Center)

The Legal Counsel Bureau with six attorneys and one support staff, was established in early 2002, shortly after the Administration took office. The Bureau is a non-litigating bureau that advises the County Executive, his deputies, other elected officials and County agencies with respect to virtually every area of law that touches upon municipal government. In addition to providing legal advice, the Bureau drafts the local and state legislation necessary to implement County policy and tracks state and federal legislation that might affect the County. The Bureau also drafts County-wide policies on various issues, including compliance with federal, state and local requirements under laws such as the Health Insurance Portability and Accountability Act (“HIPPA”), the Equal Employment Opportunities Act (“EEO”), the Americans with Disabilities Act (“ADA”), the Drug Free Workplace Act, the Family and Medical Leave Act (“FMLA”), the Help America Vote Act (“HAVA”) and County laws and ordinances relating to procurement, and ethics.

Bureau attorneys often represent the County Attorney on countywide task forces, such as Internal Controls, Countystat and the E-government initiative and work closely with the Deputy County Executives on matters regarding their verticals. Attorneys from the Bureau also act as counsel to entities such as the Planning Commission, the Board of Ethics and the Deferred Compensation Board.

Accomplishments

Charter and Administrative Code: The Bureau has updated the Nassau County Charter and Administrative Code. They are now on the County website and, for the first time in many years, available to the public. The Bureau has assumed the responsibility of maintaining them in an up-to-date condition and is presently working with Information Technology to explore means of making them more widely available, both on the Internet and in print versions.

Local legislation and rules: The Legal Counsel Bureau has drafted local legislation and rules that implement important County initiatives such as:

- Reorganization of County government;
- Eliminating discrimination in housing through amendments to the County's Human Rights Law;
- A DWI vehicle forfeiture statute that withstands judicial scrutiny;
- Creation of a fund to support the County Executive's Real Estate Consolidation Plan;
- Creation of a Taxi and Limousine Commission.

State legislation: The Bureau has prepared the County's state legislative agenda, including successful initiatives, such as:

- Assisted in drafting Sewer and Storm Water Finance Authority and amendments to the NIFA Act;
- Drafted amendments to the General Municipal Law and the Administrative Code establishing TPVA as a department of Nassau County Government;
- Drafted comprehensive amendments to the Real Property Tax Law relating to the Assessment Review Commission;
- Drafted extensions of sales tax, local assistance programs, vehicle surcharges and 911 surcharge.
- The Bureau works with the County's Albany lobbyist to track state legislation that might affect the County and drafts letters and memorandum of support and opposition for the County Executive's signature.

Research and Analysis/ Counseling: The Legal Counsel Bureau provides advice on a day-to-day basis to all departments of County government. Bureau attorneys have advised on issues as disparate as the ability of the Fire Marshall to enforce fire safety regulations on Long Island Railroad property, whether County funds can be spent on non-profit activities such as Little Leagues, First Amendment issues and Civil Service issues regarding fingerprinting of school district employees. In addition to daily counseling, the Bureau has researched and analyzed major issues that have confronted the County:

- The Bureau has researched and analyzed many of the complex issues surrounding the County Executive's Real Estate Consolidation Plan.
- The Bureau has performed extensive analysis, prepared guidelines and continues to provide daily guidance on the various provisions of law that govern County contracting, including contracts requiring legislative approval; procurement procedures under local law; State law provisions governing contracts; Federal grant requirements governing contracts.

- The Bureau handles Freedom of Information (FOIL) requests, coordinates FOIL requests to departments, provides advice to department FOIL officers, and acts in most cases as the County FOIL Appeals Officer.
- The Bureau interpreted and provided guidance to the Board of Elections and the local courts regarding HAVA.
- In addition to acting as Counsel to the Board of Ethics, the Bureau responds to numerous ethical inquiries from employees at all levels of County government regarding conflicts of interest, acceptance of gifts, outside employment and voluntary pursuits, fundraising activities, post-employment restrictions, and the necessity of disclosure and recusal.
- The Bureau has prepared an analysis of the provisions governing permits for the use and occupancy of property in County parks, with respect to issues arising from the permits issued to day camps and has assisted in the drafting of new legislation clarifying the Parks Commissioner's authority.
- As counsel to the Nassau County Deferred Compensation Plan, the Bureau has analyzed numerous legal issues including the Board's legal status, indemnification issues, trust law, fiduciary duty, Plan interpretation, Plan design and legality of investment options.
- Bureau attorneys researched and prepared an analysis of procurement issues with respect to the proposed sale of the Nassau Coliseum.

MUNICIPAL TRANSACTIONS



Daniel P. Grippo, Chief (Front row, center)

The Municipal Transactions Bureau serves as counsel to all divisions of the County on a broad range of transactions including real estate, municipal finance and contracts for the procurement of goods and services. Its twelve attorneys, assisted by three support staff, provide legal counsel to the Nassau County Treasurer concerning debt related issues, and serve on a taskforce that is working to transfer from the County to localities, maintenance responsibilities for certain road and parks. The Bureau is divided into three primary practice groups: Real Estate, Municipal Finance, and Contracts.

The Real Estate attorneys handle a variety of real estate transactions, including sophisticated sales, leasing and licensing transactions; property acquisitions; property subdivisions; inter-municipal agreements, including road transfers and tax deed parcel sales; utility and other easements; and use and occupancy permits. The group also represents the County in certain real estate-related litigation.

The Municipal Finance group represents the County as in-house counsel in connection with bond and other debt issuances by or on behalf of the County; the attorneys in the group also advise various County departments on legal issues relating to the County's operating and capital budgets and the expenditure of operating funds and bond proceeds for a range of County purposes.

Attorneys in the Contracts group draft or review and approve all general municipal contracts and related documents, including statements of work, all memoranda of understanding and "County

Executive” purchase orders entered into by the County. In addition, they review requests for proposals and bid specifications.

Attorneys in each of the practice groups represent the County throughout all phases of the transactional work and must therefore demonstrate competency in a variety of practical legal skills. Attorneys research issues, draft documentation and provide guidance in support of the County’s: solicitation of offers; evaluation of proposals; selection of proposers; and negotiation, drafting and approval of contracts.

In addition to the three primary legal practice groups, there is also an Insurance group in the Bureau that advises the County on insurance matters and ensures that vendors and others doing business with the County provide adequate coverage.

The mission of the Bureau is to negotiate and close transactions in a cost-efficient yet competent manner. Attorneys strive to provide timely and responsive legal support to clients to enable them to implement numerous and diverse government programs and to realize important and creative initiatives to better serve the public.

Recent Accomplishments

- ***Coliseum Transformation Project:*** Bureau attorneys have been working on the proposed 99 year ground lease/sale of the 77 acre Coliseum site in Uniondale, whereby, among other things, the ground tenant will be obligated to renovate and operate the Coliseum arena and transform the Coliseum site into a multiple use destination center.
- ***Grumman Redevelopment:*** The Bureau is representing the County in this complex and sophisticated land deal concerning the County’s acquisition from Grumman and the U.S. Navy. and redevelopment of, over 134 acres of land in Bethpage. The Bureau will handle this elaborate transaction that will involve multiple agreements and land transfers, including grants of easement rights.
- ***The East Massapequa Land Sale/Road Transfer:*** The Transactions Bureau represented the County in this transaction with the Town of Oyster Bay in which the County sold 9.2 acres of vacant land to the Town for the “Field of Dreams”, a recreational and park complex. The County received \$4.7 million for the land, and transferred to the Town, maintenance responsibility for nearly ten miles of County roads.
- ***60 Charles Lindbergh Lease:*** This transaction, involving the leasing by the County of essentially the entire office building at 60 Charles Lindbergh Boulevard in Uniondale, was key to the initial implementation of the County Executive’s Real Estate Consolidation Plan and the Department of Social Services’ No Wrong Door initiative. The Bureau represented the County in its negotiation of the lease.
- ***The Underhill Acquisition.*** The Bureau represented the County in this transaction whereby it acquired 16.67 acres of land, formerly part of the Underhill Estate in Jericho, to be preserved as passive recreational parkland.
- ***Sewer and Storm Water Finance Authority:*** The Bureau played an integral role in the initial board meetings of, and debt issuance by, the Nassau County Sewer and Storm Water Finance

Authority (“SSWFA”). The SSWFA’s first bond offering, consisting of \$54,200,000 SSWFA Revenue Bonds, 2004 Series A closed in June, 2004.

- ***County Guaranty of NHCC Refunding Bonds.*** As a key component of the County’s plan to stabilize its relationship to the Nassau Health Care Corporation (NHCC), the County guaranteed the \$303,355,000 Nassau Health Care Corporation Bonds, Series 2004 (Nassau County Guaranteed) issued in October, 2004. The Bureau worked closely with numerous County personnel, NHCC staff and outside legal and financial advisers to negotiate the County’s guaranty and related transaction documents for this complex financing.
- ***Deferred Compensation Plan:*** Attorneys in the Bureau drafted and negotiated the contracts for the administration and fiduciary services of the Plan which holds \$534 million dollars in County employees’ assets.
- ***HHS Contracts.*** The Bureau revised and standardized Health and Human Services contracts and contract processes to facilitate County approval of 1500 contracts for calendar year 2005.

Other Achievements since 2002

- The Transactions Bureau revamped and updated various model County documents such as the professional services contract, the use and occupancy permit and several request for proposal frameworks.
- The Bureau created other standard County model documents, such as the due diligence agreement, the direct sale agreement, the concession license agreement and model contract provisions for information technology contracts.
- The Bureau has expedited the contracts review process by standardizing documentation, educating clients and improving client communications.

TAX CERTIORARI & CONDEMNATION BUREAU



Lisa LoCurto, Chief (Back row, center)

The Tax Certiorari & Condemnation Bureau's eight attorneys, with the assistance of eight support staff, litigate in two areas of law, Article 7 tax certiorari proceedings and eminent domain or condemnation law. The mission of the Tax Certiorari division is to defend and litigate the accuracy of the property assessment tax rolls. The mission of the Condemnation division is to provide just and fair compensation for the taking of real property for lawful County purposes, while also insuring that the County does not pay more than is appropriate. This past year, the Bureau tried three tax certiorari cases and two condemnation proceedings.

Tax Certiorari

The Bureau's Tax Certiorari attorneys defend the County in tax certiorari lawsuits--special proceedings in which property owners claim that the County Assessor has valued the property incorrectly and seek a reduction of the assessment which, in turn, leads to lower taxes. The Tax Certiorari division also litigates and works with DCAs assigned to the Department of Assessment regarding exemptions, correction of errors on the tax rolls, adjusted base proportions and other issues related to the assessment of real property.

Condemnation

In condemnation proceedings, the County uses the power of eminent domain to acquire real property for its municipal use. By law, the County must have a stated purpose for the common good when it seeks to acquire real property by condemnation and it must pay just and fair compensation. Examples of acquisition projects would be: road widening and construction projects of County roads, maintenance and development of property within the County, acquisition of land for a County hospital or police station. The Condemnation division prepares and presents the acquisition project to the Nassau County Legislature, which must designate the public purpose that will be served by the taking. Thereafter, division attorneys handle all the legal actions necessary to effectuate a condemnation.

Recent Litigation Accomplishments

- ***Sunrise at Lynbrook v. Board of Assessors of Nassau County, Assessment Review Commission County of Nassau:*** The issues in this case were the proper methodology for valuing an assisted living facility and whether the market value derived by the Assessor was correct. This was the first case involving an assisted living center's assessment to be litigated in New York State. The matter settled at trial using the County's valuation methodology.
- ***Bertha Fulep v. Board of Assessors of Nassau County, Assessment Review Commission and County:*** In this tax certiorari trial, the two factual issues in dispute were the capitalization rate and the economic rent of an industrial warehouse in Massapequa. Post trial briefs were submitted by both sides and the County is waiting for a decision by Justice McCabe. The County believes that it effectively demonstrated that the petitioner failed to make a *prima facie* case and that the data relied upon by the petitioner was without merit.
- ***Four 20 Owner's Corp. v. Board of Assessors of Nassau County, Assessment Review Commission and County:*** This issue raised in this tax certiorari trial concerning a condominium building in Long Beach, was what impact the building's rent controlled status has upon its valuation. The outcome of the trial was a complete victory for the county. Justice O'Connell sustained the County's assessments for the six tax years at issue, finding that the County did not overassess the property and that no refund of taxes for overpayment of taxes was warranted. Potential savings are estimated at approximately \$500,000.
- ***Glen Cove Road Acquisition - Phase 1:*** This litigation involved the contested acquisition of property located at the intersection of Glen Cove Road and Northern Boulevard, one of the most congested and dangerous corners in Nassau County. The County prevailed in the first phase of a plan to acquire land along both sides of the intersection in order to facilitate the widening of the road and its reconstruction.
- ***Proceeding 1171 – Volvoville:***--At issue in this condemnation trial was whether the County paid just and proper compensation to the property owner of a car dealership. After three days of trial and faced with potential exposure of \$4.5 million in damages, the judge was so impressed with the County's representation, that he recommended the petitioner settle with the County, which it did, for \$900,000.

Other achievements since 2002

- Computerization has enabled the Bureau to track thousands of backlogged cases and to develop spreadsheets to analyze potential liability and exposure at trial.
- The Bureau no longer relies exclusively on outside real estate appraisers to evaluate property. By assuming much of this responsibility in-house, the Bureau has saved the County thousands of dollars and reduced the backlog of tax certiorari proceedings.
- The Bureau has taken a more proactive litigation position and is defending more tax certiorari and condemnation claims by either motion practice or at trial.

TORT BUREAU



James Gallagher, Chief (Back row, center)

The Tort Bureau defends claims involving medical malpractice, negligence by ambulance medical technicians, negligent road design, auto accident negligence, assault, false arrest, malicious prosecution, 42 USC 1983, libel, slander and other tort claims involving County departments as well as the Nassau County Medical Center and the Nassau Community College. The Tort Bureau is staffed by 13 attorneys and five support staff. Our present caseload is approximately 1300 cases. As part of our goal of providing the best possible defense for the County, we seek to resolve litigation in the most cost effective way.

Trials

Over the past three years attorneys in the Tort Bureau have tried 27 cases to verdict. Twenty-two of those verdicts were in favor of the County.

- ***Ali v. County of Nassau:*** The plaintiff in this case was struck by a car and seriously injured while crossing Stewart Avenue in Bethpage, a location at which there had been a high number of fatal accidents. The County was charged with negligent road design in not installing a traffic signal at the site of the accident. Following a nine day trial, we won a directed verdict for the County.

- ***Torres v. County:*** Another directed verdict was secured in this personal injury case arising out of the collision of a car driven by a County police officer conducting a high speed chase case, with plaintiff's car. Notwithstanding plaintiff's severe and permanent injuries, the Court adopted the County's argument that it must apply the recklessness standard with regard to the claim against the police officer since he was on an emergency mission.
- ***Daly v. County of Nassau*** The plaintiff was jogging along the side of a county road when she fell on debris that appeared to come from a broken curb. She claimed that the County was negligent in failing to properly maintain the road and that the County had constructive notice of the defect. As a result of her fall, the plaintiff suffered injuries to her face and mouth that required extensive oral surgery. The Deputy County Attorney handling the case argued that curb maintenance is not part of the County's responsibility and offered a witness to explain that point. The DCA also argued that the plaintiff assumed the risk when exercising along the road. After deliberations, the jury returned a verdict for the County.

Motions

We have had great success in resolving cases in our favor through CPLR 3211 and 3212 motions. Whenever possible we make these motions in road design cases based on qualified immunity, in trip and fall cases based on no prior written notice or no jurisdiction over the area, and in parks cases based on assumption of the risk. We make motions based on the no-fault threshold and non-assumption of a duty, and to have insurance companies take over the County's defense and to provide indemnification. The following are important cases involving significant dollar exposure which were dismissed based on our motions for summary judgment and dismissal.

- ***Jacofsky v. County:*** This case involved a claim of improper road design against the County. The plaintiff's intestate, Mr. Jacofsky, was driving southbound on Lawson Boulevard in Oceanside when a vehicle which was drag racing with another vehicle, crossed the center of the road and struck his car. Mr. Jacofsky died as a result of the accident. He was in his mid 50's and earning a low six figure yearly income, which exposed the County to liability in excess of \$1 million. We moved for summary judgment citing the County's qualified immunity in road design planning. Justice Geoffrey J. O'Connell of the Supreme Court, Nassau County granted our motion and dismissed the action against the County.
- ***Marte v. M&N Enterprises v. Nassau County Department of Health:*** This case was brought on behalf of two infants who allegedly suffered brain damage due to exposure to lead paint in an apartment building owned by M&N Enterprises. M&N Enterprises impleaded the Nassau County Department of Health, alleging that the County failed to timely notify the landlord about the lead levels in the blood of the infant plaintiffs so that the landlord could take action to abate the lead problem in the building in question. We moved for summary judgment based on case law that stands for the principle that a municipality may only be liable in lead poisoning cases if the municipality assumed a special duty to the plaintiffs. The plaintiffs, who had not sued the County directly, cross moved for leave to serve a late notice of claim. Our motion for summary judgment was granted and the cross motion was denied.
- ***Goldburt v. County:*** Two actions were brought against the County for wrongful death and negligent infliction of emotional distress. Mrs. Goldburt died when a car driven by her husband struck a tree limb at night on a County road. Tragically, Mr. Goldburt observed his wife being decapitated as a result of the accident. The tree involved was planted and maintained by the County. We moved for summary judgment in both cases. One of our arguments was that there was

no prior notice of a defective condition. Although the Supreme Court denied the motions, the Appellate Division reversed and granted our motions dismissing both actions against the County. The County had seven-figure exposure in this case if the Court had found that the County was liable for this gravely unfortunate incident.

Defended Cases

In a number of tort claims brought against the County, we are entitled to defense and indemnification. This right generally arises in cases involving permits issued by the Department of Public Works to utilities, in cases related to accidents occurring on County property where private contractors are working, and in cases related to the activities of BOCES. The County is also entitled to indemnification for accidents occurring in the Nassau Veteran's Coliseum and for claims of medical malpractice against the Nassau County Correctional Center. In addition, we are generally entitled to indemnification for accidents that occur at sporting events held on County facilities, but that are organized by outside groups. Finally, we are entitled to indemnification from Welsbach Corporation for cases related to the maintenance of traffic signals.

Over the past two years, we have requested and received defense and indemnification in 54 cases. We are being defended and indemnified for an additional 30 cases involving medical care at the Nassau County Correctional Center. Our practice is to request indemnification by letter after receipt of a notice of claim. If we are refused indemnification after a number of requests, we will commence an action for declaratory judgment. The following are examples of important cases in which the Bureau succeeded in its quest for defense and indemnification.

- ***County of Nassau v. Flushing Ultrasound:*** The County had contracted with Flushing Ultrasound for the services of a radiologist to interpret mammograms at a clinic operated by the Nassau County Department of Health. The contract provided that Flushing Ultrasound would defend and indemnify the County in any lawsuits related to the services of the radiologist. The County was sued for medical malpractice based on the failure of the radiologist to diagnose breast cancer. After Flushing Ultrasound refused our request for defense and indemnification, we moved for summary judgment in a declaratory judgment action. Judgment was granted in the County's favor and Flushing Ultrasound paid \$65,000 toward the County's defense costs.
- ***Kimberly Kwaschyn v. County:*** Claimant sustained fractures when she tripped and fell down the stairs at the Veterans Memorial Coliseum. Because the lease for the Coliseum requires the County to defend against plaintiff's structural defect allegation, and Spectacor Management Group (SMG) to defend against the inadequate lighting allegation, American Specialty Insurance, the carrier for SMG, has agreed to pay to the County 50% of costs and attorneys fees for the defense of this action. This is an important precedent. Deputy County Attorneys will do the legal work on the case and our office will bill American Specialty Insurance for our attorneys' and support staff time.
- ***Scrofano v. County:*** The plaintiff in this action sued the County for the wrongful death of the plaintiff's decedent who died when he drove his car into a large hole in a County road where Keyspan was working. The Bureau brought an action against Keyspan, asserting that the County's permit to Keyspan required it to defend and indemnify the County. Prior to interposing an answer to our complaint, Keyspan agreed to defend and indemnify.

WORKERS' COMPENSATION



Peter McDonald, Chief (Back row, second from left)

The Workers' Compensation Bureau of the County Attorney's Office, which is staffed with one Deputy County Attorney and 14 non-legal personnel, handles all Nassau County's Workers' Compensation cases for County employees. While the Bureau strives to provide entitled employees with proper wage-loss payments and appropriate medical care, it acts as the County's watchdog to insure that only lawfully entitled workers receive compensation.

The operations of the Bureau include: reviewing injury claims; setting up independent medical exams; paying appropriate medical bills and authorizing medical treatment; seeking reimbursement from New York State; preparing cases that are the subject of litigation; checking for third-party actions where the County may have a lien; and, negotiating liens and deficiency compensation setoffs. It works closely with our third party administrator, Triad, and with outside counsel that represents the County at hearings before the Workers Compensation Board. The retention of Triad will result in additional revenues to the County and cost savings through redeployment of County resources.

Accomplishments since 2002

- In July 2004, the Bureau began working with Triad Group, LLC, as third party administrator for all workers' compensation claims. Triad, which was selected after an exhaustive RFP process, is now handling case processing for all cases commenced after July 12, 2004 and, in December of 2004, it began processing all medical billings for all cases in the Bureau. Because Triad has state-of-the-art computer technology to assist its claims processing professionals, we believe that claims will be handled with greater speed and efficiency. Further, working with Triad and our risk management consultants, we expect to review all cases, open and closed, to determine whether lump sum payments, under Workers' Compensation Law §32, may be appropriate for the County and the claimant.
- Management of approximately 4800 new cases;
- \$5,782,968 in Special Funds Reimbursements and other revenues, a 140% increase over the previous four years;
- Our outside counsel has won many cases on appeal, which is very unusual in Workers' Compensation cases. Five reversals alone resulted in saving the County \$2,300,000.

AGENCY REPRESENTATION



Department of Social
Services Deputy
County Attorneys



Deputy County
Attorneys Assigned to
Office of the Assessor,
Department of Public
Works, Assessment
Review Commission,
and Department of
Corrections

Deputy County Attorneys are assigned, on a full-time basis, to five Nassau County agencies:

- Assessment Review Commission
- Department of Assessment
- Correctional Center
- Department of Social Services
- Office of Labor Relations

In addition, a Deputy County Attorney hired in 2002, served as the County's environmental counsel while assigned to the Department of Public Works where she also advised the Department on policy, contract, and commercial issues, and litigated several cases. As of January 2005, she will be re-assigned to the Economic Development vertical where, in addition to her day-to-day counseling responsibilities, she will continue in her role as environmental counsel.

Assessment Review Commission: The responsibilities of the DCA assigned to the Commission include: advising the Commissioner and appraisal staff on the law controlling valuation of property for tax purposes; analyzing commercial property assessments for settlement negotiations in tax certiorari cases; hearing and determining applications on property exemptions; drafting proposed legislation, rules, opinions, legal documents, and public information pieces; providing legal opinions relating to real estate tax assessment, collection and enforcement; and supervising staff and private appraisers assigned to the defense of proceedings in Supreme Court's Small Claims Assessment Review ("SCAR") program.

Department of Assessment: The two DCAs assigned to the Department of Assessment research virtually every legal issue affecting the Department and provide advice on the legal and policy implications of issues such as the change of a taxable status date and/or date of valuation, electronic assessment rolls, and procedures for correction of errors for the Board of Assessors. Other duties include reviewing and responding to FOIL requests; reviewing all exemptions to determine their legality; reviewing and advising the Board of Assessors on contractual and legal issues; drafting legislation to improve the assessment system, and advising the Chairman on issues relating to the proper classification of properties.

Nassau County Correctional Center: The duties of the DCA assigned to the Correctional Center include drafting and revising policies and procedures, negotiating and drafting contracts, handling disciplinary matters, representing the Department at PERB proceedings, arbitrations and in court, and developing employee management programs. Recently, she helped develop a new General Municipal Law 207-c management program designed both to closely follow the cases of Department employees injured on the job or in connection with their duties, and to enable the Department either to return injured employees to work more quickly, or submit appropriate disability applications to the State on the employees' behalf. The program, which implements provisions of the collective bargaining agreement, provides for binding dispute resolution of contested determinations. The DCA is also responsible for implementing the settlement agreement between the County and the U.S. Department of Justice concerning health services to inmates and the use of force by staff.

Department of Social Services: In this agency, five DCAs work in all areas of social services law. That may involve spousal refusal, which concerns the unwillingness of a responsible spouse to pay for taxpayer funded medical care for their spouse, children's protective services, foster care and adoption. The DCAs also work on labor/employment matters; issues concerning adult protective services; and contract matters. Finally, they provide legal advice to the Commissioner and his staff concerning policy.

Office of Labor Relations: A DCA from the Labor Bureau is assigned to this Office to represent the County at disciplinary hearings of County employees.

CLAIMS & INVESTIGATIONS



Murray Wilensky –Chief (Back row, center)

The Bureau of Claims and Investigations, which is staffed by professional investigators, claim examiners and support staff, is responsible for investigating and processing all notices of claim, both for and against Nassau County. Where practicable, and in the best interests of the County, the Bureau also negotiates settlements of property damage cases and makes recoveries for the County.

Promptly after a notice of claim is filed with the County Attorney's Office, the Bureau begins a routine investigation of the claim for settlement or rejection purposes. Where appropriate, at the request of attorneys from the Torts and General Litigation Bureaus, we conduct in-depth investigations, including surveillance, to determine an accurate assessment of the alleged damages to the claimant. We also regularly assist attorneys in all litigation bureaus by serving subpoenas and preparing appropriate affidavits.

The Bureau reviews, in conjunction with the Torts, Labor and General Litigation Bureaus, all Sheriff's incident reports relating to possible liability occurring at the Correctional Center. Appropriate investigations are conducted in those cases as well.

The Claims and Investigation Bureau plays an important role in the day to day resolution of property damage and physical injury claims involving Nassau County. By assisting the litigating units of the County Attorney's office, the Bureau's staff is often involved in some of the biggest municipal

trials in the state. By handling claims on the property damage matters, the staff assists the County in achieving early settlements that avoid the high cost of litigation.

Accomplishments since 2002

- Property damage recoveries for the past three years have averaged \$384,000/year, a 32% increase over the previous three year period.
- The Bureau has handled claims of property damage to cars seized pursuant to the County's former DWI law. Of the 48 cases assigned to the Bureau, 33 have been resolved (21 claims settled and 12 cases rejected). Of the remaining 15 cases, nine are in various stages of negotiations and/or will be ultimately rejected due to the statute of limitations. Through successful negotiations, the Bureau has reduced the County's payouts in the concluded cases by \$97,669 over actual demands.
- Several investigations and surveillances by the Bureau have resulted in verdicts in favor of the County, or have limited damages awarded by juries. For instance, in a false arrest cases tried in federal court, information found by our investigation team resulted in dismissal of a civil rights claim by the plaintiff against the County and a local school district. This case had significant exposure for the County both in damages and in attorney's fees had the plaintiff prevailed in her claim. In another case, investigators videotaped a claimant in Florida to demonstrate that the extent of his injuries were not nearly as debilitating as he and his doctor claimed. The matter was settled for a minimal amount that was less than the costs to take the matter to trial.

SUPPORT STAFF



Our excellent support staff, comprised of secretaries, accountants, clerks, and messengers, makes an integral contribution to the professional stature of the County Attorney's Office.

Acknowledgements

Thanks to Mary Ball, for her photographic services, and to Barbara DeSalvo for photographic and organizational assistance.

COUNTY ATTORNEY'S OFFICE SUPERVISORY STAFF

County Attorney.....Lorna B. Goodman

Chief Deputy County Attorney.....Elizabeth D. Botwin

Executive Staff

Managing Attorney.....Peter Reinharz

Executive Chief Deputy

County Attorney.....Meredith A. Feinman

Chief Litigating Attorney.....David Goldin

Appeals Bureau

Bureau Chief.....David Goldin

Family Court Bureau

Bureau Chief.....Stephanie Hubelbank

Deputy Bureau Chief.....Margaret Mendez Lodes

Deputy Bureau Chief.....John Phelan

General Litigation Bureau

Bureau Chief.....Esther D. Miller

Deputy Bureau Chief.....Liora Ben-Sorek

Deputy Bureau Chief.....Nancy Nicotra

Labor Bureau

Bureau Chief.....Carolyn C. Olson (through 3/23/05)

Deputy Bureau Chief.....Nicole Boutis

Legal Counsel Bureau

Bureau Chief.....Ruth Markovitz

Deputy Bureau Chief.....Elissa S. Cushman

Municipal Transactions Bureau

Bureau Chief.....Daniel P. Grippo

Deputy Bureau Chief.....Susan Gordon

Tax Certiorari & Condemnation Bureau

Bureau Chief.....Lisa LoCurto

Deputy Bureau Chief.....W. Scott Kershaw

Tort Bureau

Bureau Chief.....James N. Gallagher

Deputy Bureau Chief.....Barry Dennis

Deputy Bureau Chief.....Catherine N. Gray

Deputy Bureau Chief.....Rhonda E. Fischer

Deputy Bureau Chief.....Cheryl Lein-Taubenfeld

Workers' Compensation Bureau
 Bureau Chief..... Peter McDonald

Claims & Investigations
 Bureau ChiefMurray Wilensky

Senior Counsel

Peter Clines: *Appeals*
 Dennis Saffran: *Appeals*
 Barbara Van Riper: *Appeals*
 Shari Bordowitz: *Family Court*
 Paul Herzfeld: *Legal Counsel*
 Conal Denion: *Municipal Transactions*
 Kevin Walsh: *Municipal Transactions*
 Gennaro Pasquale: *Tax Certiorari*
 Joseph Carney: *Tort*
 Alan Korn: *Tort*
 James Scott: *Tort*
 Ilene Lark Teitler: *Tort*
 Ann-Margaret Barriga: *Department of Assessment*
 Carl Laske: *Department of Assessment*
 Loren Schindler: *Assessment Review Commission*
 Elizabeth Loconsolo: *Corrections*
 Nicholas Thalasinis: *Parks Department*
 Jane Houdek: *Department of Public Works*